

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

1934 Bedford LLC

Debtor.

Case No. 19-44751-cec
Involuntary
Chapter 11

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**PETITIONING CREDITORS' RESPONSE TO MOTION TO EXCUSE
RECEIVER AND FOR RULE 2004 EXAMINATION**

TO THE HONORABLE CARLA E. CRAIG
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Simply Brooklyn Realty, HTC Construction Management, Inc., and HTC Pluming, Inc. ("Petitioning Creditors"), by their attorneys, Rosenberg, Musso & Weiner, as their response to the motion of 1930 Bedford Avenue LLC ("Mortgagee") to excuse the state court receiver from compliance with section 543(a) of the Bankruptcy Code and to authorize the receiver to exercise his duties as receiver, respectfully represents:

1. On August 2, 2019 ("Filing Date"), Petitioning Creditors filed an involuntary petition for relief under Chapter 11 of Title 11 United States Code (the "Bankruptcy Code") against 1934 Bedford LLC (the "Debtor").

2. Petitioning Creditors are businesses that did business with the Debtor and who are owed money by the Debtor for services rendered to the Debtor. Petitioning Creditors did not acquire claims for the purpose of filing this petition. The principals of the Petitioning Creditors are not related by blood or marriage to the principals of the Debtor. Petitioning Creditors paid all the fees to their attorney for the filing of the involuntary petition and paid the filing fee. None of the Petitioning Creditors holds an ownership interest in the Debtor or any property owned by the

Debtor.

3. Petitioning Creditors did not “collude” with the Debtor in filing this case. Petitioning Creditors did discuss the foreclosure proceeding and the appointment of a receiver to manage the Debtor’s property with the Debtor. After these discussions Petitioning Creditors decided on their own that they prefer that the Debtor and its property be reorganized under the Bankruptcy Code. They reached that decision because they believe that a bankruptcy case would lead to a quicker resolution than a state court foreclosure either by a refinance or sale of the Debtor’s property. Petitioning Creditors are aware that the Debtor has a real probability that it will be able to refinance its property and they are concerned with the effect of a receiver on the value of the property and on the Debtor’s efforts to refinance. Counsel to the Petitioning Creditors has read the cases cited by Mortgagee and this case presents a far different situation than that in those cases. This is the first petition filed against the Debtor, not a second as in *In re Stern*, 268 B.R. 390 (Bankr. S.D.N.Y. 2001), nor did Petitioning Creditors file with a single disputed claim to get leverage as in *In re Grossinger*, 268 B.R. 386 (Bankr. S.D.N.Y. 2001).

4. Petitioning Creditors would like to see relief ordered under chapter 11. They did consent to an extension of time to answer the involuntary petition as a one time courtesy, but they do want relief to be ordered soon to protect their interests and to protect the Debtor’s property.

5. With respect to the application to conduct a Rule 2004 examination of the Petitioning Creditors, this motion as well as the involuntary petition itself constitute contested matters within the meaning of Bankruptcy Rule 9014 and the Federal Rules of Civil Procedure with respect to discovery should apply. Mortgage should not be allowed to conduct a “fishing expedition” without concern to relevancy and other protections contained in the federal discovery rules.

WHEREFORE, it is respectfully requested that this Court deny Mortgages's morion, together with such other and further relief as is just and proper.

Dated: Brooklyn, New York
September 4, 2019

ROSENBERG, MUSSO & WEINER, LLP
Attorneys for the Petitioning Creditors

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